

REMARKS

The final Action of April 13, 2004, has been carefully studied. Upon entry of the present amendment, the claims in the present application would be new claims 11-17, replacing claims 1-8 (the amendment of February 19, 2004 was not entered, as applicants did not file a Notice of Appeal). Applicants submit that these claims are clearly patentable over the prior art for reasons already of record, on which applicants further elaborate below. Therefore, the present applicants respectfully request favorable reconsideration, entry of the amendments presented above, and allowance.

The rejections based on Okada and Roser under both §§102 and 103 have been repeated. The examiner again has not addressed¹ the fact that rejections on the basis of the same reference under both §§102 and 103 are inconsistent. Applicants again respectfully traverse these four rejections.

As can be seen from the amendments presented above, the applicants now propose to replace claims 1-10 with more basic claims 11-17. None of the references show or make obvious the claimed process, nor do they show or make obvious the product of claim 17.

¹ MPEP §§706.07 and 707.07(b) require the PTO to answer or rebut arguments raised by an applicant.

As regards the rejections based on Okada, the examiner, incorporating commentary from paragraph 5 of Paper No. 6, states that applicants' comments with regard to Okada are without merit because applicants' claims are all product claims independent of the method features discussed by applicants². The examiner asserts that dried squid and dried shellfish in Okada are treated with high trehalose content syrup resulting in a food product equivalent to that claimed by applicants. But this is not so!

In Okada, dried squid and dried shellfish are indicated as food product to be sweetened by trehalose syrup (please see column 5, lines 61-62). It should be emphasized that dried squid sweetened by trehalose syrup is completely different from a squid heated and dehydrated in a concentrated aqueous trehalose solution **having a trehalose concentration of at least 50% at a temperature of at least 70°C**. It should be also emphasized that dried shellfish sweetened by trehalose syrup is completely different from a shellfish heated and dehydrated in a concentrate aqueous trehalose solution **having**

² Applicants respectfully submit that the PTO again has not addressed (MPEP §§ 707.07(f) and 706.07) and has not considered the fact, as pointed out in the penultimate paragraph on page 11 of the earlier Reply, that process recitations which serve to characterize the product must be given weight, noting *In re Luck et al*, 171 USPQ 523, 525 (CCPA 1973). It is fundamental that any recitation appearing in a claim which serves to define the invention must be given consideration. Applicants' process produces a unique product which simply does not exist in the prior art.

a trehalose concentration of at least 50% at a temperature of at least 70°C.

While Okada discloses at column 3, lines 15-20, a trehalose syrup having a concentration of 18.5 to 56.6% of trehalose, a food material non-fried and dehydrated in a concentrated aqueous trehalose solution at a temperature of at least 70°C, is never disclosed and cannot be obtained by following Okada.

Furthermore, it should be noted that dried squid and dried shellfish in Okada never simulate a fried food product in taste and mouth-feel. Dried squid and dried shellfish in Okada never retain the color tint inherent to the food material.

In view of these facts, it is believed that the claimed non-fried and dehydrated food product is not anticipated or made obvious by Okada.

These rejections, as well as those discussed below based on Roser, rely on assumed inherency. However, this is wrong because inherency must be reasonably certain to support a rejection on prior art. For example, please see *In re Brink*, 164 USPQ 247, 249:

Absent a showing [by the PTO] of some **reasonable certainty** of inherency, the rejection... under 35 U.S.C. 102 must fail.
(emphasis added)

Also see *Ex parte Cyba*, 155 USPQ 756, 757 (1967), and *In re Oelrich*, 212 USPQ 323, 326 (1981). There is no reasonable certainty that the products of the applied citations correspond to the claimed products, and indeed all logic (as pointed out above) suggests the contrary; therefore, inherency in the citations is neither inevitable nor reasonably certain, and inherency (which does not exist) cannot be relied upon.

Reconsideration and withdrawal of the rejections based on Okada are respectfully but strongly solicited.

As regards the rejections based on Roser, the examiner maintains that Roser teaches that the addition of trehalose to proteinaceous foodstuffs enables such foodstuffs to be dried and heated.

However, it is again noted that enabling a food material to be dried and heated by the addition of trehalose is one thing, and heating and dehydrating a food material in a concentrated aqueous trehalose solution is another thing which produces a different and non-obvious result. A concentrated aqueous trehalose solution is not used in the present invention for enabling a food material to be dried and heated, but is used for heating and dehydrating a food material to obtain non-fried food product which simulates a fried food

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product in taste and mouth-feel and stably retains the color tint inherent to that food material.

Roser does not do what applicants do (and what is claimed). Roser does not inherently obtain applicants' results.


Withdrawal of the rejections is respectfully requested.

Favorable reconsideration, entry of the amendments presented above and allowance are earnestly solicited.

Respectfully submitted,

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